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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,195	02/16/2001	David J. Gemmell	MCS-067-00	1755

27662 7590 06/21/2005  
LYON & HARR, LLP  
300 ESPLANADE DRIVE, SUITE 800  
OXNARD, CA 93036

EXAMINER
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JACOBS, LASHONDA T

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/681,195

Applicant(s)

GEMMELL, DAVID J.

Examiner

LaShonda T. Jacobs

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-16 and 18-34 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is in response to applicant's Request for Reconsideration filed on March 29, 2005. The rejections of this application have been withdrawn due to a restriction requirement (the examiner should have raised the issue of restriction and the examiner takes this opportunity to correct her position by raising the issue of restriction). Claims 1-16 and 18-34 are presented for examination.

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121.
  - I. Claims 1-16 and 18-27, drawn to a computer-implemented process for obtaining progressively higher quality versions of an and/or video program over a client-server based network, comprising a client computer performing the process actions of requesting a base quality version of the program comprises layer data of a layered unicast having hierarchically related layers in that the lowest layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy and wherein requesting a base quality version of the program from a server over the network comprises requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network, classified in class 709, subclass 231.

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II. Claims 28-29, drawn to a process of using a computing device to provide progressively higher quality versions of an audio and/or video program over a client-server based network comprising a server computer performing the process actions of upon a first request from a client computer over the network to provide the program, providing a base quality version of the program to the client over the network, wherein the base layer comprises layer data of a layered unicast having etc., classified in class 705, subclass 51.

II. Claims 30-34, drawn to a computer-implemented process for obtaining progressively higher quality versions of an and/or video program over a client-server based network, comprising a client computer performing the process actions of providing a base quality version of the program to a client computer over the network, wherein the base quality version of the program comprises layer data of a layered unicast having hierarchically related layers in that the lowest layer is a base layer and each subsequently higher level layer adds enhancing information for enhancing the quality of the program that can be rendered from the layers preceding it in the hierarchy and wherein requesting a base quality version of the program from a server over the network comprises requesting as many layers, in the order of their position in the hierarchy starting with the base layer, as can be transmitted from the server to the client without exceeding the available bandwidth of the network, classified in class 725, subclass 90.

2. The inventions are distinct, each from another because of the following reasons: Inventions I and II are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as in a method where

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requesting payment of a prescribed fee, providing at least one enhancement layer of the layered unicast to the client over the network upon payment of the prescribed fee (as set forth in invention II). See MPEP § 806.05(d).

3. The inventions are distinct, each from another because of the following reasons:

Inventions I and III are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as in a method where providing at least one enhancement layer of the layered unicast to the client over the network without also providing any layer of the base quality version of the program (as set forth in invention III). See MPEP § 806.05(d).

4. The inventions are distinct, each from another because of the following reasons:

Inventions II and III are related as sub-combinations disclosed as usable together in a single combination. The sub-combinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as in a method where providing at least one enhancement layer of the layered unicast to the client over the network without also providing any layer of the base quality version of the program (as set forth in invention II). See MPEP § 806.05(d).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T. Jacobs whose telephone number is 703-305-7494.

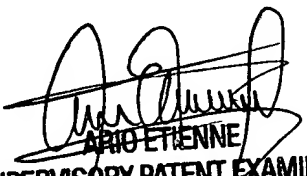
The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T. Jacobs  
Examiner  
Art Unit 2157

ltj  
June 6, 2005

  
ARIO ETIENNE  
SUPERVISORY PATENT EXAMINER  
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